

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs March 28, 2007

STATE OF TENNESSEE v. BRUCE LEE WOODS

Appeal from the Criminal Court for Hamilton County
No. 253576 Rebecca Stern, Judge

No. E2006-02367-CCA-R3-CD - Filed May 11, 2007

The defendant, Bruce Lee Woods, pleaded guilty in Hamilton County Criminal Court to one count of robbery, *see* T.C.A. § 39-13-401 (2006), and one count of domestic aggravated assault, *see id.* § 39-13-102. He agreed to two concurrent six-year terms, suspended with six years' supervised probation. A violation of probation warrant was served, resulting in the trial court revoking the defendant's probation. The defendant appeals the revocation, and we affirm the trial court's order. However, we remand for the correction of a clerical error in one of the judgments.¹

Tenn. R. App. P. 3; Judgment of the Criminal Court is Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER and J.C. MCCLIN, JJ., joined.

Myrlene R. Marsa, Chattanooga, Tennessee, for the Appellant, Bruce Lee Woods.

Robert E. Cooper, Jr., Attorney General & Reporter; Rachel W. Harmon, Assistant Attorney General; William H. Cox, III, District Attorney General; and Bates Bryan, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

Facing a 2005 indictment charging one count of aggravated robbery, *see* T.C.A. § 39-13-402 (2006), and one count of domestic aggravated assault, *see id.* § 39-13-102, against the victim, Shameca Burt,² the defendant pleaded guilty to robbery, *see id.* § 39-13-401, and domestic aggravated assault, *see id.* § 39-13-102, and the trial court entered judgments on September 12, 2005,

¹Count one's judgment incorrectly lists Tennessee Code Annotated section 39-13-402, aggravated robbery, as the conviction offense. The judgment should reflect section 39-13-401, robbery.

²The indictment spells Ms. Burt's name as "Shameca" although the transcript lists the name as "Shermeka." We will use the spelling as listed in the indictment.

that imposed two concurrent six-year sentences suspended on six years' supervised probation. The judgments require as conditions of probation drug treatment and no contact with the victim, except through the Juvenile Court with regard to the defendant's and the victim's minor child.

On April 10, 2006, the State filed a probation violation warrant that alleged violations of the following rules:

1. I will obey the laws of the United States, or any State in which I may be, as well as any municipal ordinances.
5. I will inform my Probation Officer before changing my residence or employment. I will get the permission of my Probation Officer before leaving the county of my residence or the State.
6. I will allow my Probation Officer to visit my home, employment site, or elsewhere, will carry out all lawful instructions he or she gives; will report to my Probation Officer as instructed; will comply with mandates of the Administrative Case Review Committee, if the use of that process is approved by the Court; will comply with a referral to Resource Center programs, if available, by attending; and will submit to electric monitoring and community service, if required.
10. I will observe any special conditions imposed by the Court as listed below: No contact with victim except as provided through Juvenile Court and Drug Treatment.
14. I will not engage in any assaultive, abusive, threatening or intimidating behavior. Nor will I participate in any criminal street gang related activities as defined by [Tennessee Code Annotated section] 40-35-121. I will not behave in a manner that poses a threat to others or myself.

The trial court began the probation revocation hearing on May 22, 2006. Norma Chapman with the State of Tennessee's Board of Probation and Parole testified that she began supervising the defendant on September 23, 2005. The defendant reported to her September through November. He missed his December and January appointments but reported on February 5, 2006, the last report prior to the violation report. Ms. Chapman testified that the defendant was arrested on March 28, 2006 for assaulting the victim and for aggravated criminal trespass onto the victim's property. The defendant was also charged with the April 2006 attempted first degree murder, aggravated assault, and simple assault of the then-pregnant victim and the attempted first degree murder of the victim's fetus.

On cross-examination, Ms. Chapman testified that on February 5, 2006, the defendant acted strangely at his probation appointment. He told Ms. Chapman that he was thinking of committing violent acts against himself. Thus, Ms. Chapman called the Joe Johnson Walk-in Clinic and scheduled him an immediate appointment. The victim, who was attending her own probation appointment, entered Ms. Chapman's office and offered, at first, to take the defendant to the clinic. She then informed Ms. Chapman that she could not do so because she arrived in a taxi.

Ms. Chapman also testified that she was unaware of the circumstances of the new charges. She explained that the victim informed her probation officer who then notified Ms. Chapman via the officer's supervisor. Ms. Chapman then used the police reports to draft her violation. Ms. Chapman was also unaware of the victim's condition of probation restricting her contact with the defendant. Ms. Chapman also testified that the defendant stated, "[T]he [victim] was crazy."

The victim testified that she stopped dating the defendant in September 2005 after he pleaded guilty to robbing and assaulting her. She explained that he often came by her house and demanded entry by kicking the doors and jumping through the windows. The victim testified that on December 25, 2005, the defendant entered her house via the unlocked back door without her permission. She testified, "And somehow we got to tussling," and she fell. On March 28, 2006, the defendant came to her back door, and she refused him entry. She again notified the police. On a Saturday in April, the victim, who was pregnant at the time, was having a barbeque at her house, and the defendant again entered her house. He pulled out a can of WD40 and acted "like he was going to bust [sic] [the victim] in [the] head." The victim successfully prevailed upon the defendant to leave.

However, the next day the defendant returned, and they began "tussling." The victim noticed that the defendant was carrying a knife, which was wrapped in a green scarf. She tried to exit her house via the front door. The defendant slammed the storm door on her arm, breaking the bone. He then cut her face with the knife, pulled the weave out of her hair, and ripped her clothing off. To divert the attack, she informed the defendant that she had \$40 in her pants pocket. When the defendant could not find the money, he cut her again. The victim tried to grab the knife, and the defendant cut her two more times on the finger. The victim, naked and bloody, was then able to run out the back door.

The victim testified that as a result of these injuries, she had two surgeries and suffered nerve damage to her hand, received stitches for the cuts, and suffered nerve damage on the left side of her jaw. She continued to see a plastic surgeon because the left-side jaw cut had not healed properly, and it was badly scarred.

After the defendant's arrest for this incident and while in the Hamilton County Jail, he wrote the victim three letters. The victim testified that these letters were written after the previous no-contact order.

On cross-examination, the victim testified that at the time she offered to take the defendant to the walk-in clinic, she was on probation for child neglect. The victim was not aware that on April 2, 2005, the defendant had been shot, requiring hospitalization. She also denied writing the defendant a letter while he was in the Hamilton County Jail.

At this point, the court continued the hearing until July 31, 2006. On this date, defense counsel showed the victim a letter dated April 28, 2006. The victim denied writing the letter and asserted that it was written by the defendant.

On redirect examination, the victim denied that it was in her handwriting. She testified that on April 28, her hand was in a cast due to the injury inflicted by the defendant, and she could not write. She also stated that she was staying at a safe house on this date.

On re-cross examination, she stated that she did not bring the letter stating that she was staying in the safe house to court. She also emphasized that she had nerve damage to her hand on April 28.

The defendant testified on his own behalf that he received a letter from the victim dated April 28, 2006. He further stated that in April on the same day as the victim's alleged attack, he was at the hospital because his brother had been shot.

The defendant's mother, Jeanette Woods, testified that on several occasions, the victim came to her house looking for the defendant. She stated that several times "[the police] brought [the victim] off the property." Ms. Woods further testified that her other son was shot on April 3, 2006, and he died on April 5. She stated that when her son was shot and admitted to the hospital, the defendant went with her and stayed at the hospital.³

The trial court found that the defendant violated his probation by contacting and assaulting the victim. Thus, the trial judge revoked the defendant's probation and ordered the execution of the defendant's sentence.

On appeal, the defendant challenges the trial court's revocation of his probation on the grounds that the primary evidence submitted by the State, which supports the new charges, was fictitious. He claims that the victim's testimony to the contact and the assaults was incredible; thus, he claims "that there was not 'substantial evidence' to support the conclusion of a violation of his probation[,] and the Trial Court abused its discretion by revoking [the defendant's] probation."

The standard of review upon appeal of an order revoking probation is the abuse of discretion standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). For an abuse of discretion to occur, the reviewing court must find that the record contains no substantial evidence to support the conclusion of the trial judge that a violation of the terms of probation has occurred. *Id.*; *State*

³The probation violation warrant states that the defendant assaulted the victim on April 2, 2006.

v. Delp, 614 S.W.2d 395, 398 (Tenn. Crim. App. 1980). The trial court is required only to find that the violation of probation occurred by a preponderance of the evidence. T.C.A. § 40-35-311(e) (2006). Upon finding a violation, the trial court is vested with the statutory authority to “revoke the probation and suspension of sentence and cause the defendant to commence the execution of the judgment as originally entered.” *Id.* Furthermore, when probation is revoked, “the original judgment so rendered by the trial judge shall be in full force and effect from the date of the revocation of such suspension.” *Id.* § 40-35-310. The trial judge retains the discretionary authority to order the defendant to serve the original sentence. *See State v. Duke*, 902 S.W.2d 424, 427 (Tenn. Crim. App. 1995).

Having considered the defendant’s arguments, we are unpersuaded. It must be remembered, of course, that the standard of proof in a probation revocation proceeding is that of preponderance of the evidence. T.C.A. § 40-35-311(e). Thus, the level of proof necessary to sustain a probation violation allegation is considerably less than the beyond-a-reasonable-doubt standard applicable to conviction proceedings. In this regard, the State presented a preponderance of proof that the defendant violated his probationary terms by committing new criminal offenses.

The lower court accredited the victim’s testimony, as was its prerogative as the trier of fact, when it found that the defendant contacted and assaulted the victim. Despite her apparent shortcomings, the victim gave testimony which the trial court found credible. This testimony, as the trial court found, showed that the defendant committed new criminal offenses while on probation. *See State v. Davis*, No. M2002-00035-CCA-MR3-CD, slip op. at 3 (Tenn. Crim. App., Nashville, Dec. 20, 2002) (upholding probation revocation despite the defendant’s claims that the State did not carry its evidentiary burden and that the witness to the new charges was incredible). Furthermore, in addition to the new charges, Ms. Chapman, the defendant’s probation officer, also testified that the defendant missed several appointments. We note that the trial court did not make a specific finding in this regard; however, we know that “[o]nly one basis for revocation is necessary.” *State v. Alonzo Chatman*, No. E2000-03123-CCA-R3-CD, slip op. at 3 (Tenn. Crim. App., Knoxville, Oct. 5, 2001).

We conclude, therefore, that the defendant violated the terms of his probation, and we affirm the trial court’s order.

JAMES CURWOOD WITT, JR., JUDGE